

STATE OF MICHIGAN  
COURT OF APPEALS

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In the Matter of MIKEL ROBERT BRINDLEY,  
Minor.

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DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

ELIZABETH JANE WILHELM,

Respondent-Appellant.

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UNPUBLISHED

June 14, 2007

No. 275547

Oakland Circuit Court

Family Division

LC No. 06-724896-NA

Before: Davis, P.J., and Hoekstra and Donofrio, JJ.

PER CURIAM.

Respondent appeals as of right from the trial court order terminating her parental rights to the minor child under MCL 712A.19b(3)(c)(i), (g), (j), and (l). We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

The trial court did not clearly err in finding that one of the statutory grounds for assumption of jurisdiction in MCL 712A.2(b) was established by a preponderance of the evidence. MCR 3.972(C)(1). In the January 2005 termination of respondent's parental rights to Mikel's siblings, the trial court found by clear and convincing evidence that respondent was a mother who (1) continually placed her children at risk of sexual abuse, (2) exhibited gross lack of judgment and the awareness necessary to protect her children, and (3) lacked the internal resources to effect change that would insure that she would be capable of protecting them from harm in the future. This Court affirmed that finding. *In re Wilhelm*, unpublished opinion per curiam of the Court of Appeals, issued August 9, 2005 (Docket No. 260578). Respondent took no steps to remedy her shortcomings before giving birth to Mikel. A trial court need not wait until a child is harmed or neglected, but may assert jurisdiction solely on the basis of anticipatory neglect. *In re Gazella*, 264 Mich App 668, 680-681; 692 NW2d 708 (2005).

The trial court did not err in failing to hold a timely preliminary hearing. Respondent raises this issue for the first time on appeal, and therefore it is not preserved for review. *Phinney v Perlmutter*, 222 Mich App 513, 544; 564 NW2d 532 (1997). We note that Mikel was not placed in temporary custody but remained in his father's care, and the requirement of MCR 3.965(A)(1) that a preliminary hearing be held within 24 hours of removal was inapplicable.

The trial court did not clearly err in finding that statutory grounds for termination of respondent's parental rights were established by clear and convincing evidence. MCR 3.977(J); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). Although there was inconsistency in the trial court's oral findings and the boxes it checked on the form termination order, only one statutory ground was necessary for termination and the evidence supported termination under MCL 712A.19b(3)(b)(ii), (j), and (l). Respondent participated in no remedial services following failure to protect her other children from repeated, long-term sexual molestation despite agency advice and disclosures by her son, and she remained unemployed and without stable housing. The only positive aspect in Mikel's case was the presence of a suitable father, but that did not improve respondent's ability to parent.

Further, the evidence did not show that termination of respondent's parental rights was clearly contrary to Mikel's best interests. MCL 712A.19b(5); *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000). Even if she remained a non-custodial parent, the evidence showed that respondent should never be allowed to reside with Mikel or act in a parental role. She would be a mother in name only, and thus no different from other persons of Mikel's acquaintance. The benefit to Mikel of having a legal mother in name only was far outweighed by the need to be protected from the harm he would likely suffer if respondent retained her parental rights and was allowed to make any physical or legal decisions on his behalf, particularly periodic challenges to his father's custody.

Affirmed.

/s/ Alton T. Davis  
/s/ Joel P. Hoekstra  
/s/ Pat M. Donofrio